

CHARLES DAVID KING, JR.,)
)
Plaintiff,)
)
v.) **CIVIL ACTION**
) **FILE NO.: CL14000127-00**
)
BLACKPOWDER PRODUCTS,)
INC.,)
)
and)
)
WAL-MART STORES EAST, LP,)

COME NOW, Defendants Blackpowder Products, Inc. (“BPI”) and Wal-Mart Stores East, LP (“Wal-Mart”) (collectively “Defendants”), by and through undersigned counsel, and move for sanctions against Plaintiff for spoliation of evidence.

Case 7:15-cv-00212-GEC Document 19 Filed 05/16/16 Page 1 of 4 Pageid#: 270

spoliation include dismissing the case, excluding expert testimony, or giving an adverse inference jury charge. *Silvestri*, 271 F.3d at 593; *Trigon Ins. Co.*, 204 F.R.D. at 285; *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 156 (4th Cir. 1995).

Plaintiff has so spoliated the most relevant evidence in the case that it has significantly prejudiced Defendants' defense. The gun does not exist in the same condition as it did post-incident. A bullet that was lodged in the barrel post-incident was removed and subsequently lost, the gun was disassembled, the barrel where it ruptured had pieces broken off post-incident, and the powder and bullets purportedly used at the time of the incident, as well as a portion of the ramrod, were lost, all prior to the physical evidence being provided to Defendants. Respectfully, dismissal is warranted, or alternatively that Plaintiff's expert should be excluded. But, at a minimum, Defendants are entitled to an adverse inference jury charge that each piece of altered, lost, or destroyed evidence would have been unfavorable to Plaintiff's case.

This 16th day of May, 2016.

/s/ James E. Singer
JAMES E. SINGER
(Admitted *Pro Hac Vice*)
**BOVIS, KYLE, BURCH &
MEDLIN, LLC**
200 Ashford Center North, Suite 00
Atlanta, GA 30338-2668
Telephone: (770) 391-9100
Facsimile: (770) 668-0878
jes@boviskyle.com

and

WALTER H. PEAKE, III

Virginia Bar No. 26379

FRITH, ANDERSON &

PEAKE, P.C.

29 Franklin Rd., S.W.

Roanoke, VA 24011

Telephone: (540) 725-3362

Facsimile: (540) 772-9167

wpeake@faplawfirm.com

Attorneys for Defendants

Blackpowder Products,

Inc. and Wal-Mart Stores East, LP

CERTIFICATE OF SERVICE

I hereby certify the foregoing *Defendants' Motion for Sanctions for Spoliation of Evidence* has been served on all counsel via e-mail using the CM/ECF filing system, which will send notification of such filing to the following attorneys of record:

Joseph H. McGrady, Esq.
McGrady & McGrady
127 Mill Street
Hillsville, VA 24343
joseph@mcgradylaw.com

Timothy E. Kirtner, Esq.
Gilmer, Sadler, Ingram, Sutherland & Hutton
P. O. Box 878
Pulaski, VA 24301
tkirtner@gsish.com

This 16th day of May, 2016.

/s/ James E. Singer

JAMES E. SINGER

(Admitted *Pro Hac Vice*)

**BOVIS, KYLE, BURCH &
MEDLIN, LLC**

200 Ashford Center North, Suite 500

Atlanta, GA 30338-2668

Telephone: (770) 391-9100

Facsimile: (770) 668-0878

jes@boviskyle.com

*One of the Attorneys for Defendants
Blackpowder Products, Inc.,
and Wal-Mart Stores East, LP*